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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|-----------------------|----------------------|------------------|
| 10/823,322  | 04/13/2004  | Gabriella Cerrato-Jay | 220-291 / TEL0666-01 | 4510             |
| 832   | 7590        | 08/29/2006            | EXAMINER             |                  |
| BAKER & DANIELS LLP<br>111 E. WAYNE STREET<br>SUITE 800<br>FORT WAYNE, IN 46802 |             |                       | LUKS, JEREMY AUSTIN  |                  |
|   |             |                       | ART UNIT             | PAPER NUMBER     |
|   |             |                       | 2837                 |                  |

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/823,322             | CERRATO-JAY ET AL.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Jeremy Luks            | 2837                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1, 2-4, 8-11, 13-20, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laimböck (6,305,493) in view of Martinez (4,165,789).

With respect to claims 1, 2-4, 8-9, 11, 13-16, 18-19, 22 and 26, Laimböck teaches a small, internal combustion engine (See abstract) having an exhaust port (Col. 4, Lines 22-23); and a muffler (Figure 1, #1) attached to said exhaust port of said engine (Col. 4, Lines 22-23), said muffler (1) comprising: a muffler housing (26, 27) having an inlet (28) in fluid communication with said exhaust port and an outlet (33) in fluid communication with the atmosphere, an exhaust flow path (shown by arrows 14, 15a, 15b, 16a, 16b, 17) defined within said muffler housing (26, 27), said exhaust flow path (shown by arrows 14, 15a, 15b, 16a, 16b, 17); said exhaust flow path comprising: a first passage (15a, 15b) in fluid communication with said inlet (28) and disposed substantially within a portion of said muffler housing (27) which is disposed distally from said engine or muffler inlet (28) side; and a second passage (16a, 16b) in fluid communication with said first passage (15a, 15b) and with said outlet (33) and disposed substantially within a portion of said muffler housing (26) which is disposed proximal to said engine or muffler inlet (28) side; each of said first (15a, 15b) and second (16a, 16b)

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passages being curved through an angle of at least 180°; and at least one expansion volume (18, 19) in fluid communication with said first (15a, 15b) and second (16a, 16b) passages; and two resonance chambers (8, 9) in fluid communication with said exhaust flow path (shown by arrows 14, 15a, 15b, 16a, 16b, 17); a first expansion volume (18) in fluid communication with said inlet (28); said first passage (15a, 15b) in fluid communication with said first expansion volume (18); a second expansion volume (19) in communication with said first passage (15a, 15b); and said second passage (16a, 16b) in fluid communication with said second expansion volume (19) and with said outlet (33), and wherein the first (15a, 15b) and second (16a, 16b) passages have a substantially constant cross-sectional area. Laimböck fails to teach wherein the muffler is dimensioned to provide a tuning effect to exhaust gases produced by said engine, the first and second passages are curved through an angle of 270°; and wherein the second expansion volume is in *fluid* communication with said first passage and are in succession with one another. Martinez teaches a muffler (Figure 2) dimensioned to provide a tuning effect to exhaust gases produced by an engine (Col. 1, Lines 33-35, 49-58), the first (ACD) and second (HJK) passages are curved through an angle of 270°. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Laimböck, with the apparatus of Martinez to tune the muffler to a desired frequency and provide a low cost and small sized muffler. Martinez fails to teach wherein the second expansion volume is in *fluid* communication with said first passage and are in succession with one another. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have an inlet, first expansion volume, first passage, second expansion volume, second passage, and an outlet all in succession, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Laimböck further fails to teach a single cylinder internal combustion engine. However, Official notice is taken that it would have been obvious to use the muffler with a single cylinder engine, since using mufflers with a single cylinder engine is well known in the art.

With respect to Claims 6, 10, 17 and 20, Laimböck teaches a first layer (Figure 1, #24) in which a substantial portion of said second passage (16a, 16b) is disposed, said first layer (24) disposed proximate said inlet (28); and a second layer (23) in which a substantial portion of said first passage (15a, 15b) is disposed, said second layer (23) connected to said first layer (24) and disposed distally from said inlet (28); and the first expansion volume (18) disposed intermediate said inlet (28, 30) and said first passage (15a, 15b), and the second expansion volume (19) disposed intermediate said first passage (15a, 15b) and said second passage (16a, 16b).

2. Claims 7, 12, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laimböck (6,305,493) in view of Schumacher (6,076,632). Laimböck teaches a first shell (Figure 1, #24 and 26) including an exhaust inlet (28) and containing a portion of an exhaust passage (16a, 16b), said portion of said exhaust passage (16a, 16b) curved through an angle of at least 180°; a second shell (27 and 23) including an exhaust outlet (33) and containing another portion of said exhaust passage (15a, 15b), said another portion of said exhaust passage (15a, 15b) curved through an angle of at least 180°; a partition element (25) disposed between said first (24 and 26)

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and second shells (23 and 27), said partition element (25) substantially separating said portions of said exhaust passages (15a, 15b; 16a, 16b); wherein said portions of said exhaust passage (15a, 15b; 16a, 16b) each have a substantially constant cross-sectional area; and further comprising an expansion volume disposed between said portions of said exhaust passage (19). Laimböck fails to teach a pipe in fluid communication with said second shell, and extending from said first shell through said partition element and said second shell to said outlets wherein exhaust flows into said muffler through said inlet, through said portion in said second shell and then through said portion in said first shell before exiting said muffler through said outlet.

Schumacher teaches a pipe (Figure 4, #94) in fluid communication with a second shell (16), and extending from a first shell (14) through a partition element (Figure 5, #18 and 20) and said second shell (Figure 4, #16) to an outlet (98) wherein exhaust flows into the muffler (Figure 1, #12) through an inlet (50), through a portion (Figure 6, #72) in said second shell (16) and then through a portion (86) in said first shell (14) before exiting said muffler (Figure 1, #12) through said outlet (Figure 6, #98). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Laimböck, with the apparatus of Schumacher to conduct exhaust flow axially forwardly out of the muffler.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent arts of record relating to are disclosed in the PTO-892.

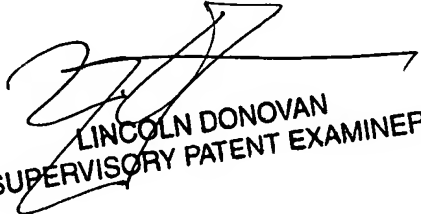
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks  
Patent Examiner  
Art Unit 2837



LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER